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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10 **(HONORABLE JANIS L. SAMMARTINO)**  
11

12 UNITED STATES OF AMERICA, )

13 Plaintiff, )

14 v. )

15 **TONY MCLEOD,** )

16 Defendant )  
17

Case No.: Case No. 13CR2297-JLS

OBJECTIONS TO THE REPORT OF DR.  
KALISH

18  
19 The defendant, Tony McLeod, by and through his attorneys, Leila W. Morgan,  
20 Michelle Betancourt and Federal Defenders of San Diego, Inc., hereby files the  
21 following objection to the Report of Dr. Kalish.

22 Although Mr. McLeod has made a good faith effort to include all objections  
23 herein, he reserves the right to contest additional legal or factual matters at  
24 sentencing.  
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1 **A. Objection**

2 Mr. McLeod objects to the Court's consideration of Dr. Kalish's report prepared  
3 on October 1, 2015. Mr. McLeod specifically objects to his opinions regarding the  
4 appropriate length of Mr. McLeod's sentence as well as his opinion regarding Mr.  
5 McLeod's danger to the community.

6 First, Dr. Kalish asserts that the tests performed by Dr. Clipson cannot be relied  
7 upon because they are based on the self-reporting of Mr. McLeod. This is factually  
8 inaccurate. The Static-99R is not based on self-reporting. Therefore, Dr. Kalish's  
9 position that the testing cannot be relied upon evidences a lack of understanding of  
10 the tests administered.

11 Moreover, Dr. Kalish seems to be basing his opinion of recidivism only on his  
12 clinical opinion. A clinical opinion he came to without meeting with Mr. McLeod,  
13 performing any tests of his own or reviewing the raw data of the tests administered  
14 by Dr. Clipson.

15 Dr. Kalish's opinion also ignores current psychological industry standards for  
16 determining the risk of recidivism in those convicted of sexual offenses. However, in  
17 the last 10 years studies have shown that the accuracy of these types of assessment  
18 were "typically only slightly above chance levels." R. Karl Hanson & Kelly  
19 Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* 2004-02,  
20 Public Safety and Emergency Preparedness Canada, ISBN: 0-662-68051-0, available  
21 at: [https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2004-02-prdctrs-sxl-rcdvsm-p](https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2004-02-prdctrs-sxl-rcdvsm-pdtd/2004-02-prdctrs-sxl-rcdvsm-pdtd-eng.pdf)  
22 [dtd/2004-02-prdctrs-sxl-rcdvsm-pdtd-eng.pdf](https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2004-02-prdctrs-sxl-rcdvsm-pdtd/2004-02-prdctrs-sxl-rcdvsm-pdtd-eng.pdf) (last visited October 9, 2015). "The  
23 sex offender actuarial risk scales were more accurate in predicting general recidivism  
24 than were the unstructured clinical assessments." *Id.* at 14. Dr. Clipson's opinion is  
25 based in part on the results of the Static-99, an actuarial risk scale, which empirical  
26 evidence has shown provides a more accurate prediction of recidivism.  
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1 Because Dr. Kalish's report does not follow current scientific literature for  
2 determining the risk of recidivism in sex offenders, his report should be stricken in its  
3 entirety as it lacks scientific basis.

4 To the extent that the Court wishes to rely upon Dr. Kalish's report in  
5 determining an appropriate sentence for Mr. McLeod, Mr. McLeod requests a hearing  
6 under *Daubert* to further examine Dr. Kalish's opinion and expert qualifications.

7 **D. Conclusion**

8 Mr. McLeod respectfully requests that the Court strike the report of Dr. Kalish.  
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11 Respectfully Submitted,  
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13  
14 Dated: September 24, 2015

/s/ Leila W. Morgan

**Leila W. Morgan**

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**CERTIFICATE OF SERVICE**

Counsel for Petitioner certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Charlotte Kaiser, Assistant United States Attorney

Charlotte.Kaiser@usdoj.gov

Dated: October 9, 2015

s/ Leila W. Morgan

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